



The liability of the service provider and the Directive on liability for defective products

Judgment of the CJEU of 21 December 2011, case C-495/10, Centre hospitalier universitaire de Besançon v Thomas Dutrueux and Caisse primaire d'assurance maladie du Jura

Background

During a surgery performed in a French hospital, a patient suffered burns caused by a defective heated mattress. The hospital was ordered to pay compensation to the patient and to the insurance company of the Jura region.

The hospital lodged an appeal against this judgment with the Conseil d'État arguing that the court had founded its sentence on a principle included in the French jurisprudence which according to the hospital would be contrary to Directive 85/374/EEC regulating the liability for damage caused by defective products. The principle in question points out that any public hospital service is objectively liable for the damage suffered by its patients due to defects in the equipments used during the healthcare assistance.

The Conseil d'État decided to make a reference for a preliminary ruling by the Court of Justice of the European Union, in order to clarify whether or not the liability of a services provider is included in the scope of Directive 85/374/ECC, when a service provider causes damages to the recipient of the services due to a defect in the equipments used for the provision of the services.

Compatibility of the different regimes of objective liability

The Court of Justice of the European Union reminds that the purpose of Directive 85/374/EEC is to achieve a full harmonization of the legal provisions of the Member States regarding producer liability (or, in certain limited cases, importer and supplier liability) for the damage caused due to defects in their products.

According to the Court of Justice of the European Union the liability of a service provider for damage caused by the use of a defective equipment does not fall within the scope of Directive 85/374/EEC, since the service provider cannot be considered neither to be a producer, nor an importer nor a supplier of the defective product.

However, the existence of national rules that establish the liability of the service provider for damage caused by the use of a defective product does not affect negatively neither the effectiveness of Directive 85/374/EEC nor the objectives that it pursues and therefore its existence is in accordance with the European Union law. However, this national regime cannot be an obstacle to the application of the liability regime of the manufacturer established in the Directive and it has to acknowledge that both the person who suffered the damage as well as the service provider are entitled to claim liabilities from the producer of the defective product, as long as the requirements established to such effect in the Directive are fulfilled.